

AMENDED IN ASSEMBLY AUGUST 30, 2011

AMENDED IN ASSEMBLY JULY 12, 2011

AMENDED IN ASSEMBLY JUNE 28, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 12, 2011

## **SENATE BILL**

**No. 408**

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### **Introduced by Senator Hernandez**

February 16, 2011

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An act to add Section 1265.9 to the Health and Safety Code, relating to health facilities.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 408, as amended, Hernandez. Health facilities: licensure.

Existing law provides for the licensure and regulation of health facilities administered by the State Department of Public Health. A violation of these provisions is a crime.

Existing law requires those desiring a license for a health facility, approval for a specified special service, or approval to manage a specified type of licensed health facility, that have not filed an application for a license to operate that facility, to file with the department a verified application on forms prescribed and furnished by the department, containing specified information.

Existing law provides that any requirement placed upon, or reference to, a corporation in the provisions regulating health facilities shall also apply to a limited liability company.

This bill would require a new license application to be filed for a health facility, as defined, ~~when~~ *before* there is a change of ownership,

as defined, *or a major change in ownership interest, as defined*. This bill would also require a ~~prescribed~~ notice to be filed with the department *at least 90 days prior to* ~~a~~ *an anticipated change in ownership, as defined, a major change in ownership interest, or a change in control interest, as defined, for certain health facilities. This bill would, for a transaction that is a change in control interest, permit the department to require a new license application to be filed or withhold approval of the transaction, as prescribed.*

*Existing law establishes the Internal Departmental Quality Improvement Account within the Special Deposit Fund, available upon appropriation by the Legislature, for internal quality improvement activities in the Licensing and Certification Program.*

*This bill would require the department to assess an administrative penalty in the amount of \$25,000 for each violation of these provisions and permit the licensee to request a specified hearing if the licensee disputes a determination by the department of a violation. This bill would provide that penalties collected pursuant to these provisions will be deposited in the Internal Departmental Quality Improvement Account.*

Because this bill expands the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1265.9 is added to the Health and Safety
- 2 Code, to read:
- 3 1265.9. (a) For purposes of this section, the following
- 4 definitions shall apply:
- 5 (1) "Change of ownership" means any of the following:
- 6 (A) For a partnership, the removal, addition, or substitution of
- 7 a partner, *unless the partners expressly agree otherwise, as*
- 8 *permitted by state law.*
- 9 (B) For an unincorporated sole proprietorship, the transfer of
- 10 title and property to another person.

(C) For a corporation, the merger of the applicant's or provider's licensee's corporation into another corporation, or the consolidation of two or more corporations, resulting in the creation of a new corporation. The transfer of corporate stock or the merger of another corporation into the applicant's or provider's corporation does not constitute a change of ownership.

(D) For a lease, the lease of all or part of an applicant's or provider's a licensee's facility constitutes a change of ownership of the leased portion.

(2) ~~"Change in ownership"~~ *"Major change in ownership interest"* means a transaction where any of the following occurs:

(A) A sale, transfer, lease, exchange, conveyance, or other disposal of a limited partnership interest, corporate shares, or limited liability company interest representing at least 50 percent of all ownership interests in a health facility that is described in subdivision (a), (b), or (f) of Section 1250 or in the current licensee, including the final transfer or assignment of multiple transfers over a 10-year period that cumulatively total at least 50 percent of ownership interests.

(B) The merger of an entity that owns or operates a health facility described in subdivision (a), (b), or (f) of Section 1250 that does not result in a change in the taxpayer identification number of the licensee.

(C) For a limited liability company, the merger of the applicant's or provider's limited liability company into another limited liability company, or the consolidation of two or more limited liability companies, resulting in the creation of a new limited liability company. The transfer of limited liability company interest or the merger of another limited liability company into the licensee's limited liability company does not constitute a change of ownership.

~~(C) A substitution of a new corporate member or member of the governing body, or any arrangement, written or oral, that would transfer voting control of a health facility described in subdivision (a), (b), or (f) of Section 1250. A substitution of a new corporate member or member of the governing body shall not constitute a change in ownership when the substitution occurs in the usual and regular course of the activities of a health facility described in subdivision (a), (b), or (f) of Section 1250.~~

1 (D) *For any unincorporated sole proprietorship, corporation,*  
2 *limited liability company, partnership, lessee, nonprofit*  
3 *corporation, or any other entity that operates or controls a health*  
4 *facility described in subdivision (a), (b), or (f) of Section 1250, a*  
5 *substitution of a new corporate member or member of the*  
6 *governing body, or any arrangement, written or oral, that would*  
7 *transfer voting control of, responsibility for, or governance of,*  
8 *that health facility.*

9 (3) “Change in control interest” means a transaction where any  
10 of the following, except a change of ownership or *major* change  
11 in ownership *interest*, occurs:

12 (A) A sale, transfer, lease, exchange, conveyance, or other  
13 disposal of ~~a any partnership~~, limited partnership interest, corporate  
14 shares, or limited liability company interest representing at least  
15 10 percent of all ownership interests in a health facility described  
16 in subdivision (a), (b), or (f) of Section 1250, or in the ~~licenseholder~~  
17 ~~licensee~~, but that represents less than ~~20~~ 50 percent of the  
18 ownership interests in the health facility or ~~licenseholder~~ licensee.

19 (B) A change in any member of the governing body or principal  
20 officers of a health facility described in subdivision (a), (b), or (f)  
21 of ~~Section 1250 that does not transfer voting control of the health~~  
22 ~~facility.~~ *of Section 1250.*

23 (C) *Any transaction that affects more than 10 percent of the*  
24 *value of a health facility or facilities that are described in*  
25 *subdivision (a), (b), or (f) of Section 1250 that are operated or*  
26 *controlled by the licensee.*

27 (b) A new license application for a health facility described in  
28 subdivision (a), (b), (c), (d), or (f) of Section 1250 shall be filed  
29 ~~when there is a change of ownership in the health facility.~~ *before*  
30 *there is a change of ownership in the health facility. A change of*  
31 *ownership shall not occur until the department approves the license*  
32 *application and issues a new license.*

33 (c) A new license application for a health facility described in  
34 subdivision (a), (b), or (f) of Section 1250 shall be filed *before*  
35 *there is a major change in ownership interest in the health facility.*  
36 *A major change in ownership interest shall not occur until the*  
37 *department approves the license application and issues a new*  
38 *license.*

39 (e) ~~At least 45 days prior to a change in ownership, or change~~

(d) (1) At least 90 days prior to an anticipated change of ownership, a major change in ownership interest, or a change in control interest in a health facility that is described in subdivision (a), (b), or (f) of Section 1250, a notice of the change shall be filed with the department. If the transaction is a change in ownership or a major change in ownership interest, a new license application shall be filed with the notice. If the transaction is a change in control interest, ~~a State Department of Public Health form HS 215A shall be filed with the notice.~~ the licensee shall notify the department of the change on a form provided by the department.

(2) Within 10 days of the receipt of a notice pursuant to paragraph (1), the department shall post receipt of the notice on the department's Internet Web site.

(3) With regard to a transaction that is a change in control interest, the department may, within 90 days of the notice pursuant to paragraph (1), require a new license application to be filed or withhold approval of the transaction, if the department has reason to believe, based on past compliance history, that any person or entity, whose control interests in the facility or facilities operated or controlled by the licensee are affected by the transaction, has not complied with state or federal laws or regulations, or is under investigation for any alleged violation of state or federal laws or regulations.

(e) (1) If a licensee of a health facility under Section 1250 fails to comply with any requirement of this section, the department may assess the licensee an administrative penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) per violation. If the licensee disputes a determination by the department regarding the alleged violation, the licensee may, within 10 days of receipt of the penalty assessment, request a hearing pursuant to Section 131071. An administrative penalty shall be paid when appeals have been exhausted and the penalty has been upheld. All administrative penalties collected by the department pursuant to this section shall be deposited in the Internal Departmental Quality Improvement Account within the Special Deposit Fund created pursuant to subdivision (f) of Section 1280.15.

(2) In enforcing this subdivision, the department shall take into consideration the special circumstances of small and rural hospitals, as defined in Section 124840, in order to protect access to quality care in those hospitals.

1     ~~(d)~~  
2     (f) Notwithstanding the rulemaking provisions of Chapter 3.5  
3     (commencing with Section 11340) of Part 1 of Title 2 of the  
4     Government Code, the department may implement this section by  
5     means of all facility letters, or similar instructions, without taking  
6     further regulatory action.  
7     SEC. 2. No reimbursement is required by this act pursuant to  
8     Section 6 of Article XIII B of the California Constitution because  
9     the only costs that may be incurred by a local agency or school  
10    district will be incurred because this act creates a new crime or  
11    infraction, eliminates a crime or infraction, or changes the penalty  
12    for a crime or infraction, within the meaning of Section 17556 of  
13    the Government Code, or changes the definition of a crime within  
14    the meaning of Section 6 of Article XIII B of the California  
15    Constitution.